

THIS IS THE ADOPTED RULE AND MAY BE USED TO DETERMINE TAX LIABILITY AND OR EXEMPTIONS UNTIL SUCH TIME AS THE CODIFIED VERSION IS AVAILABLE FROM THE CODE REVISER'S OFFICE.

AMENDATORY SECTION (Amending WSR 02-05-043, filed 2/13/02, effective 3/16/02)

WAC 458-30-700 Designated forest land--Removal--Change in status--Compensating tax. (1) **Introduction.** This rule describes what events trigger the removal of land from designated forest land status under chapter 84.33 RCW, the procedures followed for removal, and the resulting compensating tax.

(2) **Events triggering the removal of designated forest land status.** The assessor must remove forest land from its designated forest land status when:

(a) The owner submits a written request to remove the owner's land from designated forest land status;

(b) The owner sells or transfers the land to an individual or entity exempt from property tax because of that individual's or entity's ownership;

(c) The assessor determines that the land is no longer primarily devoted to and used for growing and harvesting timber;

(d) The owner has failed to comply with a final administrative or judicial order made because of the violation of the restocking, forest management, fire protection, insect and disease control and forest debris provisions of Title 76 RCW or the rules that implement Title 76 RCW;

(e) Restocking has not occurred to the extent or within the time specified in the application for designation of the land; or

(f) The owner sells or transfers forest land to a new owner who has not signed a notice of continuance, except when the new owner is the heir or devisee of a deceased owner. RCW 84.33.140(5).

(3) **How to retain designated forest land status when the land is sold or transferred.** When designated forest land is sold or transferred, the new owner may retain designated forest land status by filing a signed notice of continuance with the deed. The notice of continuance may be signed as part of the real estate excise tax (REET) affidavit or as a separate form if the county has decided it will require owners to submit both the REET affidavit and an attached separate notice of continuance. If multiple owners own the land, all owners or their agent(s) must sign the notice of continuance. A notice of continuance is not required for a new owner to retain designated forest land status when the new owner inherits the property.

(a) The owner may obtain the notice of continuance form and a real estate excise tax (REET) affidavit from the county. The county assessor's office has the notice of continuance form and

the county treasurer's office has the REET affidavit.

The notice of continuance may also be obtained on the Internet at <http://dor.wa.gov> under property tax, "forms."

(b) After the new owner signs the notice of continuance as part of the REET affidavit and, if required, the separate notice, the REET affidavit and notice must be submitted to the assessor for approval. The assessor may also require the owner to submit a timber management plan before approving the notice of continuance.

(i) The assessor signs the REET affidavit and indicates whether the land will or will not qualify to continue as designated forest land.

(ii) An assessor signs the REET affidavit and approves the land for continued classification if:

(A) The owner provides a complete and accurate notice of continuance signed by the new owner demonstrating that the forest land will continue to qualify as designated forest land; and

(B) At the assessor's option, the new owner provides a timber management plan for the property.

(iii) The assessor is allowed up to fifteen days to confirm that the information upon the notice is complete and accurate. The assessor may use this time to confirm that the timber management plan provides:

(A) The correct legal description for the forest land;

(B) The new owner's statement that the forest land is owned by the same person, consists of twenty or more contiguous acres, and is primarily devoted to and used to grow and harvest timber;

(C) A statement about whether the land is used to graze livestock;

(D) A brief description of the timber stands located on the land;

(E) A statement about whether the land has been used in compliance with the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW; and

(F) If the land has been recently harvested or supports a growth of brush and noncommercial type timber, a description of the owner's plan to restock the forest land within three years.

A timber management plan may contain, but is not required to contain, any other information that the harvester needs for its own business purposes (i.e., a statement of goals for managing the land or identifying resource protection areas on the land (like riparian buffer areas along a stream or an unstable slope) that limit harvesting activities).

(iv) If the assessor determines that the notice of

continuance or the timber management plan is not accurate or complete, the owner may resubmit the corrected information to the assessor.

(v) If the assessor determines that the land does not qualify to continue as designated forest land, the assessor removes the land upon the date of the conveyance and provides the owner with a notice of removal containing reason(s) for the removal and the amount of compensating taxes owed.

(c) Once the assessor signs the notice of continuance as part of the REET affidavit and the separate notice of continuance, if required, the notice(s) are then submitted to the treasurer. Before the treasurer can stamp the REET affidavit as approved for recording, the treasurer collects any REET due because of the transfer, and collects all compensating tax if the land does not qualify for continuance as designated forest land because it was denied continuance by the assessor. The county recording clerk must not accept any deeds or other transfer documents unless the treasurer has stamped the REET affidavit.

(d) A notice of continuance is not required when the transfer of the forest land is to a new owner who is an heir or devisee, however, the new owner must continue to meet the requirements of designated forest land to avoid removal from designation. The treasurer determines that a transfer is by inheritance because the claim for the inheritance exemption is filled out on the REET affidavit with supporting documentation. The treasurer should notify the assessor when forest land has been transferred by inheritance without a notice of continuance.

(4) **Assessor decisions and procedures.** Before removing the land from its designated forest land status, the assessor follows certain procedures and takes into account circumstances that may delay or prevent removal.

(a) The assessor must determine:

(i) The actual area of land to be removed from forest land status;

(ii) Whether the land has been exempted from an unretired special benefit assessment;

(iii) The true and fair value of the area being removed as of January 1st of the year of removal from designation;

(iv) Forest land value for the area to be removed;

(v) The last levy rate that applied for that area; and

(vi) The amount of time the land has been designated and classified as forest land, including the number of days up to the date of removal for the current year of removal.

(b) The assessor may require the owner to provide a legal description of the land area intended for removal when the

landowner requests removal of owner's land from designated forest land status.

(c) The remaining land outside of the affected removal area continues to be designated as forest land if the owner retains twenty or more contiguous acres primarily devoted to and used for growing and harvesting timber. If the remaining land fails to meet the forest land definition because there are less than twenty contiguous acres primarily devoted to and used for growing and harvesting timber, the owner may request reclassification as timber land under the open space program in chapter 84.34 RCW.

(d) The assessor must provide the owner with a written notice and an opportunity to be heard by the assessor, or the assessor's deputy, when the assessor intends to remove the land because it is no longer primarily devoted to and used for growing and harvesting timber. RCW 84.33.140 (5)(d). Each county assessor may set his or her own procedure for giving a landowner this notice and opportunity to be heard so long as it is done in a reasonable and consistent manner that ensures due process for each owner.

(e) An assessor may not remove forest land merely because an owner subdivides the land into separate parcels, if contiguous parcels of the subdivided land still add up to at least twenty contiguous acres, remain in the same ownership, and continue to be primarily devoted to and used for growing and harvesting timber. An assessor may ask an owner of designated forest land if the use of the land has changed when the owner subdivides a tract of designated forest land into separate parcels.

(f) If the assessor determines the land is no longer primarily devoted to and used for growing and harvesting timber, but there is a pending acquisition by an entity that would qualify for exemption from compensating tax under subsection (6)(e) of this rule, the assessor must not remove the land from its designated forest land status. RCW 84.33.140 (5)(d)(i). In order to prevent removal, the government entity or other qualified recipient must provide written proof to the assessor of its intent to acquire the land or documentation that demonstrates the transaction will qualify for an exemption from compensating tax under subsection (6)(e) of this rule. The entity acquiring the land must provide this written proof within sixty days of a request by the assessor. Thereafter, once a year, the governmental entity or other recipient must provide the assessor of the county in which the land is located written evidence of its intent to acquire the land. This written evidence must be provided on or before December 31st of each

year or at an earlier date if the assessor makes a written request for such information. RCW 84.33.140 (5)(d)(i). Upon the assessor's written request, the information must be provided within sixty days from the date the assessor mails or hands the request to the owner or the postmark date of the request, if later.

(g) The assessor must not remove forest land from its designation if a governmental restriction is imposed on the land that prohibits, in whole or in part, the harvesting of timber.

(i) If only a portion of the forest land is impacted by the governmental restriction, the assessor cannot use the restriction as a basis to remove the remainder of the land from its designated forest land status.

(ii) A governmental restriction includes:

(A) Any law, regulation, rule, ordinance, program, or other action adopted or taken by a federal, state, county, city, or other governmental entity; or

(B) The land's zoning or its presence within an urban growth area designated under RCW (~~36.7A.110~~) 36.70A.110.

(5) **Removal proceedings.** After determining that a triggering event causing removal has occurred, the assessor must provide timely written notice(s) to the taxpayer. RCW 84.33.140 (5)(d) (written notice and opportunity to be heard), RCW 84.33.140(9) (notice of removal). Upon receiving the notice of removal, the landowner may appeal the removal or apply for reclassification of the land to the open space program under chapter 84.34 RCW. If the owner chooses to appeal the removal, the appeal must be filed within thirty days of the postmark date for the notice or by July 1st of the year of removal, whichever is later. If the owner chooses to apply for reclassification, they must do so within thirty days of the postmark date of the notice.

(a) **When does the land get removed from the designated forest land status?** If the removal is a result of a sale or transfer, the assessor removes the land on the date of sale or transfer provided in the legal conveyance. If the removal is based upon a determination made about the land by the assessor or at the request of the owner, the assessor removes the land on the date shown on the notice of removal mailed to the owner.

(b) **Notice of removal.** The assessor uses the notice of removal to notify the owner that the land has been removed from designated forest land status. Within thirty days of removing land from designated forest land status, the assessor must mail a notice of removal to the owner with the reasons for the removal. The owner, seller, or transferor may appeal the removal to the county board of equalization.

THIS IS THE ADOPTED RULE AND MAY BE USED TO DETERMINE TAX LIABILITY AND OR EXEMPTIONS UNTIL SUCH TIME AS THE CODIFIED VERSION IS AVAILABLE FROM THE CODE REVISER'S OFFICE.

(i) If the property is being removed because the assessor has determined the land is no longer primarily devoted to and used for growing and harvesting timber, the assessor provides two notices. First, the assessor must notify the taxpayer of his or her intent to remove the property and give the owner an opportunity to be heard. The assessor may require the owner to provide pertinent information about the land and its use in the response to the assessor's first notice. When the assessor determines that the property still does not qualify as designated forest land after the first notice is sent, the assessor mails the owner the second notice, the notice of removal, but only after:

(A) The owner declines the opportunity to be heard;

(B) The owner fails to timely respond to the first notice;

or

(C) The assessor has received and considered the owner's timely response to the notice of intent to remove and nevertheless concludes that the property is no longer primarily devoted to growing and harvesting timber.

(ii) If the removal is based upon an owner's request for removal, upon receipt of a request for removal from an owner, the assessor sends the notice of removal to the owner showing the compensating tax and recording fee due.

(iii) The notice provides the reason(s) for removing the land from designation and the date of the removal. RCW 84.33.140(9). The notice includes the compensating tax calculated in rule section (6) and the necessary recording fees to be paid. It also includes the due date for payment, along with the landowner's rights to appeal the removal or the true and fair value at the time of removal, and the owner's right to apply for the land to be reclassified under chapter 84.34 RCW. The county must use the notice of removal form prepared by the department.

(iv) The assessor must also provide written notice of the removal to any local government filing a notice regarding a special benefit assessment under RCW 84.33.210 within a reasonable time after the assessor's decision to remove the land. The assessor may provide a simple statement with the legal description of the land, the name of the landowner, and the date of removal, if he or she includes a copy of the notice sent to the landowner. RCW 84.33.230.

(c) What happens when an owner chooses to appeal the removal? Unless the removal is reversed upon appeal, the assessor continues the process to remove the property from designated forest land status. The assessor may choose to delay collection of the compensating tax and recording fee until the

appeal is decided. However, if the assessor postpones the collection of the compensating tax and recording fee, the assessor must notify the treasurer to temporarily delay collection. The assessor must also notify the owner that if the determination to remove is upheld, then interest will be due from the date the compensating tax and recording fee were due.

(i) If the removal is reversed upon appeal, the assessor shall reinstate the land as designated forest land, discharge any lien placed against the land, revise any assessments made against the property during the interim, refund the recording fee paid, and refund or cancel any compensating taxes and interest paid or owing.

(ii) If the removal is upheld upon an appeal in which the assessor has delayed collection, the compensating tax and recording fee are due immediately with interest accrued from the date the tax and fee were originally due. Upon receiving notice of the decision upholding the removal, the assessor must immediately notify the treasurer to collect any unpaid compensating taxes, fees, and interest on the land.

(d) What happens when an owner applies to have the land reclassified under chapter 84.34 RCW? If an application for reclassification is submitted by the owner within thirty days after the notice of removal has been mailed, the forest land is not removed from classification until the application for reclassification under chapter 84.34 RCW is denied or later removed from classification under RCW 84.34.108. RCW 84.33.145(1).

(i) The assessor processes an application for reclassification in the same manner as it processes an initial application for classification under chapter 84.34 RCW.

(ii) A timber management plan must be filed with the county legislative authority within sixty days of the date the application for reclassification under this chapter or from designated forestland under chapter 84.33 RCW is received. The application for reclassification will be accepted, but may not be processed until this plan is received.

(A) If this plan is not received within sixty days of the date the application for reclassification is received, the application will be denied.

(B) If circumstances require it, the assessor may allow an extension of time for submitting a timber management plan when an application for reclassification is received. The applicant will be notified of this extension in writing. When the assessor extends the filing deadline for this plan, the county legislative authority may delay processing the application until the plan is received. If the timber management plan is not

received by the date set by the assessor, the application for reclassification will be automatically denied.

(iii) When the owner sells or transfers land (or a portion of the land) while an application for reclassification is pending, an assessor may accept a notice of continuation, and allow the owner to revise the application for reclassification to reflect the name of the new owner of the property.

~~((i))~~ (iv) If the application for reclassification under chapter 84.34 RCW is approved, the assessor shall transfer the property to its new classification.

~~((i))~~ (v) If the application for reclassification under chapter 84.34 RCW is denied, the assessor must record the removal notice and inform the treasurer's office to immediately begin collection of the compensating tax and the recording fee.

(6) **Compensating tax.** Compensating tax is imposed when land is removed from its forest land status. This tax recaptures taxes that would have been paid on the land if it had been assessed and taxed at its true and fair value instead of the forest land value.

(a) **Calculating the compensating tax.** The assessor uses the current year's levy rate, the forest land value, and the true and fair value for the area to be removed from forest land status to calculate the compensating tax. The compensating tax consists of two parts: The recapture of taxes for previous years that the land was classified or designated as forest land, up to a maximum of nine years; and the recapture of taxes for the portion of the current year up to the date of removal in the year the land is removed from designation. RCW 84.33.140(11).

(i) The compensating tax for the previous years is calculated by determining the difference between the amount of taxes assessed at the forest land value for the removal area and the amount of taxes that would have been paid if the land had been valued at its true and fair value in the year of removal. That difference is multiplied by the number of years the land was classified or designated as forest land up to a maximum of nine years.

(ii) The compensating tax for the portion of the year of removal from January 1st to the date of removal is calculated by determining the difference between the amount of taxes assessed at the forest land value and the taxes that would have been paid if the land had been valued at its true and fair value for the portion of the year up to the removal date.

(b) Formulas for calculating taxes after removal:

(i) Calculation of prior year's compensating tax:

THIS IS THE ADOPTED RULE AND MAY BE USED TO DETERMINE TAX LIABILITY AND OR EXEMPTIONS UNTIL SUCH TIME AS THE CODIFIED VERSION IS AVAILABLE FROM THE CODE REVISER'S OFFICE.

True and Fair Value of Land (Jan 1st of year removed)	Less	Forest Land Value at time of removal	Multiplied by	Last levy Rate Extended Against Land	Multiplied by	Years (not to exceed 9)	Equals	Compensating Tax
\$-----	!	\$-----	x	\$-----	x		=	\$-----

(ii) Calculation of current year's taxes to date of removal:

		÷	365	=	
	No. of days designated as forest land		No. of days in year		Proration factor (To items (A) and (B))
(A)	\$ Market value	x	Levy rate	x Proration factor	= \$
(B)	\$ Forest land value	x	Levy rate	x Proration factor	= \$
(C)	Amount of compensating tax for current year ((A) minus (B))				= \$

(c) The assessor notifies the treasurer of the amount of compensating tax and the due date for the tax by providing the treasurer a copy of the removal notice. Compensating tax is due and payable to the county treasurer thirty days after the assessor mails to the owner the notice of removal informing the owner of the reasons for removal and the amount of compensating tax due. RCW 84.33.140(11). However, when property is sold or transferred, any compensating tax owed must be paid to the county treasurer before recording the conveyance. The county recording authority will not accept any instrument transferring the land, unless the compensating tax was paid or was not owed.

(d) **What happens if the compensating tax is not paid on the due date?** If the compensating tax is not paid by the due date, the tax is considered delinquent. Interest, set at the statutory rate for delinquent property taxes specified in RCW 84.56.020, will accrue against the amount of the outstanding taxes from the due date until the entire amount owing is paid. Unpaid compensating tax and interest becomes a lien on the land. RCW 84.60.020.

(i) This lien attaches at the time the forest land is removed from designation.

(ii) The lien has priority over any recognizance, mortgage, judgment, debt, obligation, or responsibility against the land.

THIS IS THE ADOPTED RULE AND MAY BE USED TO DETERMINE TAX LIABILITY AND OR EXEMPTIONS UNTIL SUCH TIME AS THE CODIFIED VERSION IS AVAILABLE FROM THE CODE REVISER'S OFFICE.

(iii) This lien must be fully paid before any other recognizance, mortgage, judgment, debt, obligation, or responsibility may be charged against the land.

(iv) The lien can be foreclosed upon expiration of the same period after delinquency and in the same manner as liens for delinquent real property taxes are foreclosed under RCW 84.64.050. RCW 84.33.140(12).

(e) Compensating tax is not imposed on land removed from the forest land designation if the removal resulted solely from any of the following:

(i) A transfer to a government entity in exchange for other forest land within Washington state;

(ii) A transfer under either the power of eminent domain or upon the threat of eminent domain by an entity with the power of eminent domain that intends to exercise this power. The entity must threaten to exercise eminent domain in writing or demonstrate this threat by some other official action;

(iii) A donation of fee title, development rights, or the right to harvest timber in order to protect, preserve, maintain, improve, restore, limit the future use, or conserve the property for public use or enjoyment (see RCW 84.34.210 and 64.04.130). Provided, this donation is made to a:

(A) State agency;

(B) Federal agency;

(C) County;

(D) City;

(E) Town;

(F) Metropolitan park district (see RCW 35.61.010);

(G) Metropolitan municipal corporation (see RCW 35.58.020);

(H) Nonprofit historic preservation corporation as defined in RCW 64.04.130; or

(I) Nonprofit nature conservancy corporation or association as defined in RCW 84.34.250.

However, when the land is no longer being used for one of the purposes listed above, compensating tax will be imposed on the owner of the land at that time;

(iv) The sale or transfer of fee title to a government entity (see the governmental entities listed above in clause (iii) of this rule section) or a nonprofit nature conservancy corporation as defined in RCW 64.04.130 exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage advisory council under its established natural heritage plan as defined in chapter 79.70 RCW (natural area preserves). However, if the land is no longer used to protect and conserve the area for state natural area preserve purposes, or fails to comply with

the terms of a natural heritage plan, compensating tax will be imposed on the owner of the land at that time;

(v) A sale or transfer of fee title to the state's parks and recreations commission for park and recreation purposes;

(vi) An official action of an agency of the state of Washington or the county or city in which the land is located disallowing the current use of the land. "Official action" includes city ordinances, zoning restrictions, the Growth Management Act, the Shoreline Management Act, and the Environmental Policy Act;

(vii) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(viii) The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040;

(ix) In a county with a population of more than one million (i.e., King County), a transfer of a property interest to a government entity, or to a nonprofit historic preservation corporation or nonprofit nature conservancy corporation (as these corporations are defined in RCW 64.04.130) and the property interest being transferred is to:

(A) Protect or enhance public resources; or

(B) Preserve, maintain, improve, restore, limit the future use of, or otherwise to conserve for public use or enjoyment. When the land is no longer being used for any of these purposes, the owner of the land at the time will be required to pay compensating tax. RCW 84.33.140 (12) and (13);

(x) The sale or transfer of forest land within two years after the death of an owner who held at least a fifty percent interest in the land if:

(A) The individual(s) or entity(s) who received the land from the deceased owner is selling or transferring the land; and

(B) The land has been continuously assessed and valued as classified or designated forest land under chapter 84.33 RCW or classified under chapter 84.34 RCW since 1993. The date of death shown on the death certificate begins the two-year period for sale or transfer; or

(xi) The sale or transfer of forest land between July 22, 2001, and July 22, 2003, if:

(A) An owner who held at least a fifty percent interest in the land died after January 1, 1991;

(B) The individual(s) or entity(s) who received the land from the deceased owner is selling or transferring the land; and

(C) The land has been continuously assessed and valued as classified or designated forest land under chapter 84.33 RCW or classified under chapter 84.34 RCW continuously since 1993. The

THIS IS THE ADOPTED RULE AND MAY BE USED TO DETERMINE TAX LIABILITY AND OR EXEMPTIONS UNTIL SUCH TIME AS THE CODIFIED VERSION IS AVAILABLE FROM THE CODE REVISER'S OFFICE.

date of death shown on the death certificate is the date used to determine the owner's date of death.

(7) When will the land be assessed at its true and fair value and the taxes become payable? The land will be assessed at its true and fair value on the date it is removed from forest land status. The assessor revalues the land removed from forest land status with reference to its true and fair value on January 1st in the year of removal. RCW 84.33.140(10). The property tax for the remainder of the year following the date of removal is based on land's true and fair value.

(a) To calculate the increase the assessor must determine the number of days remaining in the year from the date of removal. The increase in property tax is due on the same due date as all other property taxes are due for the year (generally, April 30th and October 1st of the current year. See RCW 84.56.020).

(b) Formula for calculating the increase in property taxes for the remainder of the year in which the land is being removed:

$$\begin{array}{rclcl}
 & & \div & 365 & = \\
 \text{(i)} & & & & \\
 & \text{No. of days} & & \text{No. of days in year} & \\
 & \text{from date of} & & & \\
 & \text{removal to the} & & & \\
 & \text{end of the year} & & & \\
 \text{(ii)} & \$ & \times & & = & \$ \\
 & \text{Market value} & & & & \\
 & & & \text{Levy rate} & & \text{Proration} \\
 & & & & & \text{factor} \\
 \text{(iii)} & \$ & \times & & = & \$ \\
 & \text{Forest land} & & & & \\
 & \text{value} & & \text{Levy rate} & & \text{Proration} \\
 & & & & & \text{factor} \\
 \text{(iv)} & \text{Total amount of increased taxes for current year ((ii) minus (iii))} & & & = & \$
 \end{array}$$

(c) If the taxes for the year of removal have not yet been billed, the tax should be recalculated based on the true and fair value of the land removed for the portion of the year following the date of removal.

(d) An owner may appeal the true and fair value of the land used to calculate the increase in the remaining current year's taxes or the compensating taxes within thirty days of the notice (or up to sixty days if such time limit has been adopted by the county legislative authority) or on or before July 1st, whichever is later. RCW 84.40.038.

(8) What happens when forest land reclassified under chapter 84.34 RCW is later removed from that classification

THIS IS THE ADOPTED RULE AND MAY BE USED TO DETERMINE TAX LIABILITY AND OR EXEMPTIONS UNTIL SUCH TIME AS THE CODIFIED VERSION IS AVAILABLE FROM THE CODE REVISER'S OFFICE.

before ten years have passed? If reclassified forest land is later removed, a combination of compensating tax and additional tax will be imposed unless the basis for removal is one of the circumstances listed as exempt from additional tax under RCW 84.34.108(6).

(a) The amount of compensating tax is equal to the difference, if any, between the amount of property tax last levied on the land as forest land and an amount equal to the new true and fair value of the land when removed from classification under RCW 84.34.108 multiplied by the dollar rate of the last property tax levy extended against the land, multiplied by

(b) A number equal to:

(i) The number of years the land was classified or designated as forest land under chapter 84.33 RCW, if the total number of years the land was classified or designated under chapter 84.33 RCW and classified under chapter 84.34 RCW is less than ten; or

(ii) Ten minus the number of years the land was classified under chapter 84.34 RCW, if the total number of years the land was classified or designated under chapter 84.33 RCW and under chapter 84.34 RCW is at least ten.